

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1136 OF 2001**

Jaidev Das ..Appellant

versus

Smt. Renu Chintamani Das & Anr. ..Respondents

Mr. Rajiv Patil for the Appellant.

Mr. K. V. Tembe for the Respondents.

CORAM : D. G. DESHPANDE, J.

DATE : 28TH APRIL, 2005

ORAL ORDER :

1. Heard counsel for the Appellant and the Respondents.

2. Appellant is the son and respondent No.1 is the mother. He filed a suit to protect his interest in the suit property. The suit was filed on behalf of the appellant - plaintiff through his son because the plaintiff is of unsound mind, though this fact is disputed by the mother, medical certificate is there.

3. The crucial question is that the appellant claim right in the property on the basis of the

document Article 'G' which is filed in the compilation given to me by the appellant. According to the appellant that document was executed by the mother. However she was not confronted with this document when she entered the witness box. According to the respondents Advocate this document came on record at the stage of arguments and therefore the document is not exhibited or the contents are not proved. Counsel for the appellant also concedes that there are no pleadings of the plaintiff in respect of this document. The document is vital. Though its execution is denied by the mother. Therefore this is a case for remand and as such I pass the following order :

ORDER

. Judgment and decree of the trial court dismissing the suit is set aside.

. Matter is remanded back to the trial court where the plaintiff will be entitled to amend the plaint with reference to this document and other incidental matters. The Defendants will also be entitled to consequently amend their written statement. The Court will frame fresh issues and parties are at liberty to adduce evidence, that may

be found necessary with reference to the issues framed.

. Appellant to go on paying Rs.750/- per month to the respondent No.1 as occupation charges. In case of any two consecutive defaults, liberty given to the plaintiff to amend the plaint and lead the evidence will be taken of.

. Trial court will decide the matter within four months from the receipt of this order. If R & P is received, the same should immediately be sent back to the trial court. No order as to costs of this appeal.

28.04.2005

(D.G. DESHPANDE, J.)